

relevance of such information for the establishment of privity of contract between CMRS carriers and calling parties, Pilgrim agrees with the FTC that any relaxation of rate information requirements as part of the calling party notification should be the subject of a future rulemaking proceeding, as opposed to being built into the rules at this juncture.

Finally, several parties have urged the Commission to use special dialing patterns (such as 1+ dialing, special NXX codes, or service access codes (SACs)) as substitutes for the Commission's proposed four-element notification, arguing that these methods would furnish sufficient notice to calling parties that they are placing CPP calls and thus will be subject to charges, and that the use of NXX codes or SACs would make it possible for organizations using private branch exchange (PBX) equipment or similar equipment to monitor and regulate the manner in which persons with access to the organizations' phones can place calls to CPP subscribers.¹⁷²

Pilgrim agrees with the many parties who oppose these various alternatives.¹⁷³ The use of 1+ dialing would be a poor substitute for the direct provision of specific rate information to calling parties because it obviously would not impart any specific rate information and, for some calling parties, may not even be associated with toll calling, since 1+ dialing is currently being

¹⁷² See Ad Hoc Users Comments at 19; AHMA Comments at 3; California Comments at 16; Connecticut DPUC Comments at 5; Joint Parties Comments at 35-36; VoiceStream Comments at 11; Washington State Department of Information Services Comments at 1-2; Wisconsin PSC Comments at 4. *See also* Cable & Wireless Comments at 3 (supports use of special NXX code, but opposes use of 1+ dialing or special area codes); CPI Comments at 6-7 (opposes use of special codes, but favors use of 1+ dialing); Michigan Comments at 2 (favors use of SACs in the short term as a means of blocking CPP calls).

¹⁷³ See AirTouch Comments at 49; Ameritech Comments at 4; Bell Atlantic Comments at 4; CTIA Comments at 21-22; Florida PSC Comments at 3; GTE Comments at 21-22; NTCA Comments at 4; Nextel Comments at 6-7; Ohio PUC Comments at 11; USCC Comments at 7; US West Comments at 27.

used in some areas for calls that do not entail any toll charges.¹⁷⁴ Pilgrim does agree with those parties who have suggested that CPP poses a potential problem for companies, government agencies, educational institutions, and other organizations using PBXs, because these organizations may find it difficult to restrict calls to CPP subscribers and thus may be billed for calls they have not expressly authorized.¹⁷⁵ We disagree, however, that special NXX codes or SACs should be used in order to solve this potential problem.

Employment of these special codes, for example, would risk seriously undermining the opportunity for CPP to succeed in the marketplace because wireless subscribers seeking to subscribe to CPP would need to change their wireless numbers in order to do so. In addition, a wireless customer seeking to terminate a subscription to CPP also would have to switch numbers, and this could serve to further discourage interest in signing up for the CPP option. Further, some parties have advocated the use of these codes so that PBX owners can block the capability to make CPP calls, but at least one institution using PBXs has expressed concern regarding the use of blocking as a long-term solution.¹⁷⁶ In addition, the use of such codes would not be consistent with the Commission's number portability policies, since numbers associated with special CPP codes could not be ported.¹⁷⁷

¹⁷⁴ Bell Atlantic Comments at 4.

¹⁷⁵ See Ad Hoc Users Comments at 4; Joint Parties Comments at 7.

¹⁷⁶ Michigan Comments at 3.

¹⁷⁷ See Ameritech Comments at 4; Florida PSC Comments at 3; Nextel Comments at 7.

VI. THERE IS NO NEED FOR THE COMMISSION TO REGULATE RATES FOR CALLING PARTY PAYS SERVICES

There is strong sentiment in the record in support of Pilgrim's position that the Commission should not regulate rates that CMRS carriers would charge calling parties for calls completed to CPP subscribers.¹⁷⁸ In Pilgrim's view, there are several reasons why the Commission should follow the weight of the record and refrain from any rate regulation regarding CPP at this time.

CMRS carriers do not have an incentive to attempt to charge excessive rates for their CPP offerings.¹⁷⁹ If rates are perceived to be too high by calling parties, or by prospective CPP customers, then the service will not be accepted in the marketplace. If the objective of CMRS carriers is to use the CPP option as a means of stimulating overall network usage, by encouraging their customers to keep their phones activated for greater periods of time¹⁸⁰ and to accept greater volumes of incoming calls, this objective obviously would be frustrated if rates perceived to be too high led to consumer rejection of the offering.¹⁸¹

¹⁷⁸ See AirTouch Comments at 57; Bell Atlantic Comments at 5; BellSouth Comments at 21; CTIA Comments at 31; GTE Comments at 28-29; Leap Comments at 12; Motorola Comments at 8; Nextel Comments at 11; PCIA Comments at 31. *But see* AARP Comments at 5; California Comments at 13; CPI Comments at 2, 8; Joint Parties Comments at 3; MCIW Comments at 16.

¹⁷⁹ See, e.g., VoiceStream Comments at 11 (CMRS carriers have little or no incentive to charge exorbitant rates for CPP calls).

¹⁸⁰ Motorola has noted that part of wireless customers' reluctance to leave their phones turned on has been to conserve battery life, "but this is becoming less of a concern as battery technology improves." Motorola Comments at 3.

¹⁸¹ CTIA Comments at 28 ("Because CPP is a means by which carriers can increase usage and promote efficient usage of available capacity, it is reasonable to expect that . . . low per-minute usage charges will be implemented for CPP.").

In this regard, the argument that calling parties are “captive” callers because they cannot select the CMRS carrier does not seem to have much force. With respect to any given call, the calling party can disconnect if he or she decides that the announced charges are too high. Even if there may be some cases in which the calling party will be forced by circumstances to complete calls even though he or she finds the rates excessive, Pilgrim believes that, to the extent that many calling parties reach the same judgment regarding the overpricing of CPP calls, they will choose to reach CPP customers in other ways and this overall trend will lead to the failure of CPP in the marketplace. Avoiding such a scenario provides the incentive for reasonable CPP rates.

Moreover, in the unlikely case that CPP providers were to initiate and persist in attempts to charge excessive rates for CPP calls, the Commission could respond to consumer complaints by taking action to require the adjustment of CPP rates to reasonable levels. Rather than attempting to solve in advance a “problem” that might never materialize, a better course in this case would seem to be to provide CMRS carriers with the flexibility needed to price their CPP offerings in the manner they deem best suited to foster marketplace acceptance and to stimulate traffic on their networks, with the Commission reserving the option to act affirmatively if carriers’ rate-setting practices demonstrate a convincing need for such action.

Finally, such an approach would be in keeping with long-standing Commission precedent regarding its approach to wireless services.¹⁸² The Commission has never chosen to regulate the rates of services provided by wireless carriers, and its confidence that the marketplace and com-


¹⁸² See CTIA Comments at 31 (“The unprecedented nature of the Commission’s inquiry into regulating CPP rates cannot be overstated.”).

petition would serve to set reasonable CMRS rates has proven to be well-founded. Rather than break with this precedent, the Commission should continue to rely upon marketplace forces to be the best means of setting CPP rates at reasonable levels that will gain consumer acceptance.

VII. CONCLUSION

Calling Party Pays is the latest example of the ability of CMRS carriers to develop innovative offerings to meet consumer demand and to strive for a competitive edge in the marketplace. CPP illustrates the wisdom of the Commission's view that competitive forces can drive the expansion of wireless markets and benefit consumers. And CPP also holds the promise of helping to position wireless carriers for head-to-head competition against ILECs in local exchange markets.

But the Commission needs to act to make this happen. The availability of LEC billing and collection is the key to CPP market entry; without this LEC service CPP will be handcuffed from the start, and its potential competitive and consumer benefits will be lost. If the Commission seizes the initiative by giving CMRS carriers the necessary tools to bill and collect for CPP, and by crafting notification and other requirements that will ensure that consumers are well served as CPP offerings gain their marketplace entrance, then the Commission will again be successful in providing the leadership necessary to clear the path for the continued growth of competition in telecommunications markets.



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CERTIFICATE OF SERVICE

I, Joelle Zajk, a Professional Assistant with the law firm of Hunton & Williams, hereby
certify that on October 18, 1999, a true and correct copy of the foregoing REPLY COMMENTS
OF PILGRIM TELEPHONE, INC., were served by hand delivery upon the following:

Magalie Roman Salas
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A handwritten signature in black ink, appearing to read "Joelle Zajk", is written over a horizontal line.

Joelle Zajk